

AMENDED IN SENATE APRIL 28, 1999

**SENATE BILL**

**No. 370**

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**Introduced by Senator Solis**

***(Coauthors: Senators Baca, Dunn, Johannessen, and  
Karnette)***

***(Coauthors: Assembly Members Keeley, Washington, and  
Wildman)***

February 11, 1999

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An act to amend Section 368 of the Penal Code, *and to repeal Section 15656 of the Welfare and Institutions Code*, relating to elder abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 370, as amended, Solis. Elder abuse: failure to provide.

Existing law makes it a crime for any person, under specified circumstances or conditions, who has the care or custody of any elder or dependent adult, to willfully cause or permit the person or health of that elder or dependent adult to be injured. This provision has been interpreted by the courts to apply to a wide range of abusive situations, including active assaultive conduct, and passive forms of abuse.

This bill would define the phrase "causes or permits the person or health of the elder or dependent adult to be injured" in the above provision, to include, but not be limited to, a physical or mental injury caused by the failure to prevent malnutrition, provide medical care for physical or mental health needs, to assist with personal hygiene, or furnish food, clothing, or shelter. The bill would also state that this provision is a codification of case law. *The bill would also provide that*

*in order to be convicted of a violation for the above-described conduct, the prosecution must prove that the failure of the defendant to act constitutes criminal negligence.*

*The bill would furthermore delete redundant or less protective provisions relating to the crime of elder abuse that are contained in the Welfare and Institutions Code.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 368 of the Penal Code is  
2 amended to read:

3 368. (a) The Legislature finds and declares that  
4 crimes against elders and dependent adults are deserving  
5 of special consideration and protection, not unlike the  
6 special protections provided for minor children, because  
7 elders and dependent adults may be confused, on various  
8 medications, mentally or physically impaired, or  
9 incompetent, and therefore less able to protect  
10 themselves, to understand or report criminal conduct, or  
11 to testify in court proceedings on their own behalf.

12 (b) (1) Any person who, under circumstances or  
13 conditions likely to produce great bodily harm or death,  
14 willfully causes or permits any elder or dependent adult,  
15 with knowledge that he or she is an elder or a dependent  
16 adult, to suffer, or inflicts thereon unjustifiable physical  
17 pain or mental suffering, or having the care or custody of  
18 any elder or dependent adult, willfully causes or permits  
19 the person or health of the elder or dependent adult to be  
20 injured, or willfully causes or permits the elder or  
21 dependent adult to be placed in a situation in which his  
22 or her person or health is endangered, is punishable by  
23 imprisonment in a county jail not exceeding one year, or  
24 in the state prison for two, three, or four years.

25 (2) If in the commission of an offense described in  
26 paragraph (1), the victim suffers great bodily injury, as  
27 defined in subdivision (e) of Section 12022.7, the  
28 defendant shall receive an additional term in the state  
29 prison as follows:



1 (A) Three years if the victim is under 70 years of age.

2 (B) Five years if the victim is 70 years of age or older.

3 (3) If in the commission of an offense described in  
4 paragraph (1), the defendant proximately causes the  
5 death of the victim, the defendant shall receive an  
6 additional term in the state prison as follows:

7 (A) Five years if the victim is under 70 years of age.

8 (B) Seven years if the victim is 70 years of age or older.

9 (c) Any person who, under circumstances or  
10 conditions other than those likely to produce great bodily  
11 harm or death, willfully causes or permits any elder or  
12 dependent adult, with knowledge that he or she is an  
13 elder or a dependent adult, to suffer, or inflicts thereon  
14 unjustifiable physical pain or mental suffering, or having  
15 the care or custody of any elder or dependent adult,  
16 willfully causes or permits the person or health of the  
17 elder or dependent adult to be injured or willfully causes  
18 or permits the elder or dependent adult to be placed in  
19 a situation in which his or her person or health may be  
20 endangered, is guilty of a misdemeanor.

21 (d) Any person who is not a caretaker who violates any  
22 provision of law proscribing theft or embezzlement, with  
23 respect to the property of an elder or dependent adult,  
24 and who knows or reasonably should know that the victim  
25 is an elder or dependent adult, is punishable by  
26 imprisonment in a county jail not exceeding one year, or  
27 in the state prison for two, three, or four years, when the  
28 money, labor, or real or personal property taken is of a  
29 value exceeding four hundred dollars (\$400); and by a  
30 fine not exceeding one thousand dollars (\$1,000), by  
31 imprisonment in a county jail not exceeding one year, or  
32 by both that fine and imprisonment, when the money,  
33 labor, or real or personal property taken is of a value not  
34 exceeding four hundred dollars (\$400).

35 (e) Any caretaker of an elder or a dependent adult  
36 who violates any provision of law proscribing theft or  
37 embezzlement, with respect to the property of that elder  
38 or dependent adult, is punishable by imprisonment in a  
39 county jail not exceeding one year, or in the state prison  
40 for two, three, or four years when the money, labor, or

1 real or personal property taken is of a value exceeding  
2 four hundred dollars (\$400), and by a fine not exceeding  
3 one thousand dollars (\$1,000), by imprisonment in a  
4 county jail not exceeding one year, or by both that fine  
5 and imprisonment, when the money, labor, or real or  
6 personal property taken is of a value not exceeding four  
7 hundred dollars (\$400).

8 (f) Any person who commits the false imprisonment  
9 of an elder or dependent adult by the use of violence,  
10 menace, fraud, or deceit is punishable by imprisonment  
11 in the state prison for two, three, or four years.

12 (g)(1) As used in this section, “elder” means any  
13 person who is 65 years of age or older.

14 (2) As used in this section, “dependent adult” means  
15 any person who is between the ages of 18 and 64, who has  
16 physical or mental limitations which restrict his or her  
17 ability to carry out normal activities or to protect his or  
18 her rights, including, but not limited to, persons who have  
19 physical or developmental disabilities or whose physical  
20 or mental abilities have diminished because of age.  
21 “Dependent adult” includes any person between the  
22 ages of 18 and 64 who is admitted as an inpatient to a  
23 24-hour health facility, as defined in Sections 1250, 1250.2,  
24 and 1250.3 of the Health and Safety Code.

25 (3) As used in this section, “caretaker” means any  
26 person who has the care, custody, or control of, or who  
27 stands in a position of trust with, an elder or a dependent  
28 adult.

29 (4) As used in this section, the phrase “causes or  
30 permits the person or health of the elder or dependent  
31 adult to be injured” includes, but is not limited to, a  
32 physical or mental injury caused by the failure to prevent  
33 malnutrition, the failure to provide medical care for  
34 physical or mental health needs, the failure to assist with  
35 personal hygiene, or the failure to furnish food, clothing,  
36 or shelter. *In order to be convicted of a violation of this*  
37 *section for conduct described in this paragraph, the*  
38 *prosecution must prove that the failure of the defendant*  
39 *to act constitutes criminal negligence. It is not a failure to*  
40 *provide medical care if it is proved that the elder or*



1 *dependent adult, who is competent and of sound mind,*  
2 *has voluntarily, and without undue influence, refused*  
3 *medical treatment or a particular type of medical*  
4 *treatment.*

5 (h) Nothing in this section shall preclude prosecution  
6 under both this section and Section 187 or 12022.7 or any  
7 other provision of law. However, a person shall not  
8 receive an additional term of imprisonment under both  
9 paragraphs (2) and (3) of subdivision (b) for any single  
10 offense, nor shall a person receive an additional term of  
11 imprisonment under both Section 12022.7 and paragraph  
12 (2) or (3) of subdivision (b) for any single offense.

13 SEC. 2. Paragraph (4) of subdivision (g) of Section  
14 368 is a codification of case law ~~holding that the~~  
15 ~~circumstances specified in that paragraph constitute~~  
16 ~~abuse under this section.~~

17 SEC. 3. *Section 15656 of the Welfare and Institutions*  
18 *Code is repealed.*

19 ~~15656.(a) Any person who, under circumstances or~~  
20 ~~conditions likely to produce great bodily harm or death,~~  
21 ~~willfully causes or permits any elder or dependent adult,~~  
22 ~~with knowledge that he or she is an elder or a dependent~~  
23 ~~adult, to suffer, or inflicts unjustifiable physical pain or~~  
24 ~~mental suffering upon him or her, or having the care or~~  
25 ~~custody of any elder or dependent adult, willfully causes~~  
26 ~~or permits the person or health of the elder or dependent~~  
27 ~~adult to be injured, or willfully causes or permits the elder~~  
28 ~~or dependent adult to be placed in a situation such that~~  
29 ~~his or her person or health is endangered, is punishable~~  
30 ~~by imprisonment in the county jail not exceeding one~~  
31 ~~year, or in the state prison for two, three, or four years.~~

32 ~~(b) Any person who, under circumstances or~~  
33 ~~conditions other than those likely to produce great bodily~~  
34 ~~harm or death, willfully causes or permits any elder or~~  
35 ~~dependent adult, with knowledge that he or she is an~~  
36 ~~elder or a dependent adult, to suffer, or inflicts~~  
37 ~~unjustifiable physical pain or mental suffering on him or~~  
38 ~~her, or having the care or custody of any elder or~~  
39 ~~dependent adult, willfully causes or permits the person or~~  
40 ~~health of the elder or dependent adult to be injured or~~

1 ~~willfully causes or permits the elder or dependent adult~~  
2 ~~to be placed in a situation such that his or her person or~~  
3 ~~health may be endangered, is guilty of a misdemeanor.~~

4 ~~(c) Any caretaker of an elder or a dependent adult~~  
5 ~~who violates any provision of law prescribing theft or~~  
6 ~~embezzlement, with respect to the property of that elder~~  
7 ~~or dependent adult, is punishable by imprisonment in the~~  
8 ~~county jail not exceeding one year, or in the state prison~~  
9 ~~for two, three, or four years when the money, labor, or~~  
10 ~~real or personal property taken is of a value exceeding~~  
11 ~~four hundred dollars (\$400), and by a fine not exceeding~~  
12 ~~one thousand dollars (\$1,000), or by imprisonment in the~~  
13 ~~county jail not exceeding one year, or by both that~~  
14 ~~imprisonment and fine, when the money, labor, or real or~~  
15 ~~personal property taken is of a value not exceeding four~~  
16 ~~hundred dollars (\$400).~~

17 ~~(d) As used in this section, “caretaker” means any~~  
18 ~~person who has the care, custody, or control of or who~~  
19 ~~stands in a position of trust with, an elder or a dependent~~  
20 ~~adult.~~

21 ~~(e) Conduct covered in subdivision (b) of Section~~  
22 ~~15610.57 shall not be subject to this section.~~